



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/588,037

05/21/2007

Thomas Arnebrant

30986/42246

3658

4743 7590 12/15/2008
MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

EXAMINER

HOFFMAN, SUSAN COE

ART UNIT

PAPER NUMBER

1655

MAIL DATE

DELIVERY MODE

12/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,037	Applicant(s) ARNEBRANT ET AL.	
	Examiner Susan Coe Hoffman	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2008 and 16 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 1655

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 16, 2008 has been entered.
2. Claims 18-35 are currently pending.

Claim Objections

3. Claim 25 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 25 does not further limit claim 18 because claim 25 states that the composition is solid. However, claim 18 has previously specified that the composition is a solid. Thus, claim 25 does not further limit claim 18.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1655

4. Claims 18-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Attstrom (US 5,260,282) in view of O'Mullane (WO 93/16707) and Grodberg (US 5,156,845).

Attstrom teaches a method of treating xerostomia using linseed extract which is freeze-dried (see column 1, lines 16-28, column 4, lines 20-23, Examples 1 and 3 and claims). The reference does not teach that the linseed extract has the adsorption values claimed by applicant. However, according to page 16 and the figure in applicant's specification, freeze-dried linseed extract exhibits the adsorption characteristics claimed. Thus, the linseed extract used in Attstrom intrinsically contains the adsorption characteristics required by the claims. The reference teaches rehydrating the dried linseed extract into an aqueous form. The reference does not specifically teach using the linseed extract in solid form or spray-drying the linseed extract.

O'Mullane teaches that both freeze-drying and spray-drying were known in the art at the time of the invention to be useful in creating dried linseed extracts for treating xerostomia. Thus, an artisan of ordinary skill would reasonably expect that spray-drying could be substituted for freeze-drying in the creation of the extract used in Attstrom. This reasonable expectation of success would motivate the artisan to modify Attstrom to include spray-drying as taught by O'Mullane.

O'Mullane also teaches that the dried linseed extract can be formulated into solid forms such as lozenges (see page 4). Grodberg teaches that solid compositions such as lozenges or tablets are superior to liquid solutions for treating xerostomia. Grodberg teaches that the solid compositions are superior because liquids have limited effects and only act for a short time while solids can be retained in the mouth for a prolonged period of time. This leads to improved efficacy in treating dry mouth (see column 2, lines 50-end). Thus, an artisan of ordinary skill

Art Unit: 1655

would have reasonably expected that the method of treating xerostomia taught by Attstrom would be improved if the dried linseed powder composition used in Attstrom was modified into a solid composition such as a lozenge or tablet as taught by Grodberg rather than into the aqueous solution taught by Attstrom. The artisan would expect that the dried linseed in Attstrom could be successfully incorporated into these solid composition based on the teaching by O'Mullane of the incorporation of dried linseed extract into solid lozenges. This reasonable expectation of success would motivate the artisan to modify Attstrom to include the formulating the dried linseed extract into solid lozenges and tablets for the treatment of xerostomia.

The references do not specifically teach creating a composition with the water content claimed. The amount of water in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Since the references together teach using a solid composition rather than an aqueous composition, an artisan would be motivated to minimize the presence of water. For example, the solid compositions in Grodberg are free of water (see Examples). Thus, it would have been customary for an artisan of ordinary skill to determine the optimal amount water content in order to best formulate the solid products taught by the references. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of water amount would have been obvious at the time of applicant's invention.

5. No claims are allowed.

Art Unit: 1655

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe Hoffman whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday-Thursday, 9:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Susan Coe Hoffman/
Primary Examiner, Art Unit 1655